Supreme Court, U. S.
FILED
AUG 31 1977
MICHAEL RODAK, JR., CLERK

No. 76-1856

In the Supreme Court of the United States

OCTOBER TERM, 1977

HUMBOLDT PLACER MINING COMPANY, PETITIONER

v.

CECIL D. ANDRUS, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE SECRETARY OF THE INTERIOR IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-2 to A-8) is reported at 549 F. 2d 622. The order of the district court (Pet. App. A-9 to A-10) is unreported. The decision of the Secretary of the Interior (Pet. App. A-10 to A-37) is reported at 8 IBLA 407. Subordinate Department of the Interior opinions are unreported and appear at Pet. App. A-39 to A-130.

JURISDICTION

The judgment of the court of appeals was entered on January 6, 1977. A timely petition for rehearing *en banc* was denied on March 28, 1977 (Pet. App. A-1). The petition for a writ of certiorari was filed on June 25, 1977. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals properly upheld a decision of the Secretary of the Interior as supported by substantial evidence, where the district court, in upholding that decision, had failed to render an opinion or give detailed reasons for its ruling.

STATEMENT

Petitioner filed this action in the United States District Court for the Eastern District of California to review a decision of the Secretary of the Interior that certain of its mining claims condemned by the United States were without compensable value.[1] Petitioner had asserted in the administrative proceedings that the claims had value both as a gold placer and as a gravel deposit (Pet. App. A-3). The Hearing Examiner concluded that the claims had no value on either ground (Pet. App. A-3 to A-6), and the Interior Board of Land Appeals upheld that decision (Pet. App. A-3, A-5 to A-7).

After reviewing the administrative record, the district court granted the Secretary's Motion for Summary Judgment and dismissed petitioner's complaint (Pet. App. A-9 to A-10). The court did not write an opinion or set forth in detail the reasons for its decision. The Court of Appeals for the Ninth Circuit affirmed. That court reviewed with particularity the evidence presented in the administrative proceedings and concluded that the Secretary's decision was supported by substantial evidence (Pet. App. A-3 to A-8).

ARGUMENT

Petitioner contends (Pet. 6-13) that the court of appeals should have required the district court to set forth the evidence on which it relied in granting summary

[1]This Court in *Best* v. *Humboldt Mining Co.*, 371 U.S. 334, held that the Secretary of the Interior should rule in the first instance upon the validity of the mining claims.

judgment for the Secretary and that the Secretary's decision, on the record as a whole, is not supported by substantial evidence.

Both courts considered the administrative record as a whole and rejected petitioner's contention that the Secretary's decision was unsupported by substantial evidence (Pet. App. A-9 to A-10, A-5 to A-7). Those factual determinations were correct and do not warrant further review.

The failure of the district court to make specific findings or to write an opinion presents no issue meriting this Court's attention. Although the Tenth Circuit has recognized that specific findings by the district court in granting summary judgment facilitate "proper appellate review," *Nickol* v. *United States*, 501 F. 2d 1389, 1391, and has directed district courts within its jurisdiction to make such findings, *Nickol* v. *United States, supra*; *Heber Valley Milk Company* v. *Butz*, 503 F. 2d 96, it has taken such action in the exercise of its supervisory powers and not as a matter of constitutional or statutory interpretation. Indeed, the Tenth Circuit has conceded that courts of appeals "are in as advantageous a position as the district court to determine this question from the record," *Nickol* v. *United States, supra*, 501 F. 2d at 1392. Thus, although other courts of appeals may elect as a matter of policy to follow the Tenth Circuit practice,[2] there is no conflict among the circuits that this Court should resolve and no need for a uniform national rule.

In the present case, the court of appeals provided precisely the sort of review that petitioner contends was required at the district court level, evaluating the evi-

[2]The Ninth Circuit upon occasion has expressed a preference that such findings be made. *Multiple Use, Inc.* v. *Morton*, 504 F. 2d 448, 450.

dence in light of petitioner's contrary arguments. Under these circumstances, it would serve no purpose to return this case to the district court to do what the court of appeals already has done.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1977.

DOJ-1977-08